

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

STATE OF OHIO,	:	APPEAL NO. C-080566
		TRIAL NO. B-0709083
Plaintiff-Appellee,	:	
		<i>JUDGMENT ENTRY.</i>
vs.	:	
MICHAEL MCKINNEY,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

Defendant-appellant Michael McKinney was indicted for three counts of sexual battery in violation of R.C. 2907.03(A)(7). The bill of particulars alleged that McKinney had engaged in sexual conduct with the victim when he was a teacher and she was a student at Arlington Heights Academy (“AHA”). McKinney pleaded guilty to one count of attempted gross sexual imposition in violation of R.C. 2923.02 and 2907.05(A)(5). A stipulated statement of facts was read into the record. Over defense counsel’s objection, McKinney was classified as a Tier I sex offender under Am.Sub.S.B. No. 10 (“Senate Bill 10”) and notified that he was required to register for 15 years and to verify his address annually. McKinney has appealed his sex-offender classification.

McKinney’s assignment of error alleges that the trial court erred in finding that he is subject to Senate Bill 10’s tier-classification and registration requirements because he is not a sex offender under R.C. 2950.01(B)(2)(a).

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

R.C. 2950.01(B)(1) provides that “ ‘sex offender’ means, subject to division (B)(2) of this section, a person who is convicted of, pleads guilty to, has been convicted of, has pleaded guilty to, is adjudicated a delinquent child for committing, or has been adjudicated a delinquent child for committing any sexually oriented offense.” R.C. 2950.01(B)(2)(a) states that “ ‘sex offender’ does not include a person who is convicted of, pleads guilty to, has been convicted of, has pleaded guilty to, is adjudicated a delinquent child for committing, or has been adjudicated a delinquent child for committing a sexually oriented offense if the offense involves consensual sexual conduct or consensual sexual contact and * * * [t]he victim of the sexually oriented offense was eighteen years of age or older and at the time of the sexually oriented offense was not under the custodial authority of the person who is convicted of, pleads guilty to, has been convicted of, has pleaded guilty to, is adjudicated a delinquent child for committing, or has been adjudicated a delinquent child for committing the sexually oriented offense.”

The parties stipulated to the facts of the offense. In 2006, the victim, an emancipated juvenile who lived with her child in an apartment, began attending AHA where McKinney was a teacher. She needed a small amount of high-school credit to graduate. By January 2007, the victim had completed all course work needed for graduation. She was admitted to Cincinnati State Technical and Community College (“Cincinnati State”). Her last high-school transcript was delivered from AHA to Cincinnati State in January 2007. Her college classes began in February 2007. At that time, she was no longer physically attending AHA.

After the victim turned 18 on March 20, 2007, she and McKinney entered into a relationship and engaged in consensual sexual activity. McKinney and the victim believed that she was no longer a student at AHA. The victim had completed her

education at AHA, was no longer attending the school, and was attending classes at Cincinnati State, but she would not “technically graduate” from AHA until she received her diploma in June 2007.

McKinney’s offense involved consensual sexual activity with an 18-year-old victim. The only question was whether the victim was under McKinney’s custodial authority when the offense occurred. We hold that under the facts of this case McKinney had no custodial authority over the victim at the time the sexually oriented offense occurred. Therefore, under R.C. 2950.01(B)(2)(a) McKinney is not a sex offender, and he is not subject to Senate Bill 10’s tier-classification and registration requirements. The assignment of error is sustained.

Therefore, the judgment of the trial court is reversed solely for the reasons set forth in this judgment entry, and this cause is remanded to the trial court with instructions to modify its sentencing entry to reflect that McKinney is not classified as a Tier I sex offender, and that he is not subject to Senate Bill 10’s registration and verification requirements, and for further proceedings consistent with law and this judgment entry. The judgment of the trial court is affirmed in all other respects.

Further, a certified copy of this Judgment Entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

HILDEBRANDT, P.J., SUNDERMANN and DINKELACKER, JJ.

To the Clerk:

Enter upon the Journal of the Court on May 13, 2009
per order of the Court _____
Presiding Judge